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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Policies and Rules Concerning
Unauthorized Changes of Consumers
Long Distance Carriers

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CC Docket 94-129

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**REPLY COMMENTS OF
COMMUNICATIONS TELESYSTEMS INTERNATIONAL**

Communications TeleSystems International ("CTS"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding. CTS, an interexchange carrier, filed initial comments in this proceeding and herein responds to the comments of other parties addressing the Federal Communications Commission's ("FCC's" or "Commission's") proposed rules governing the form, content and use of Letters of Agency ("LOAs"). As a provider of both business and residential interexchange telephone services, CTS and its customers will be directly affected by the Commission's new rules regarding LOAs.

I. INTRODUCTION

In its initial comments, CTS supported the Commission's efforts to eliminate deceptive marketing practices and consumer confusion by ensuring that LOA's are clear, legible, and unambiguous. CTS expressed its concern, however, that the Commission's proposed regulations would be burdensome, restrictive, and unnecessarily impede competition in the long distance

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market. Review of initial comments indicates that many other parties, inter alia, AT&T Corp. ("AT&T"), MCI Telecommunications Corp. ("MCI"), Sprint Communications Company ("Sprint"), the Telecommunications Resellers Association ("TRA"), Operator Services Company ("OSC"), America's Carriers Telecommunications Association ("ACTA"), Touch 1 Communications ("Touch 1"), and the Competitive Telecommunications Association ("CompTel"), share CTS's concerns regarding the restrictive nature of the regulations. Furthermore, CTS notes that most small IXCs, and their representative associations share CTS's view that the regulations are overreaching and will substantially burden these smaller carriers, thus restricting their ability to compete for customers with larger carriers.^{1/} Additionally, CTS notes that numerous commenters also believe that PIC change regulations should be uniform nationwide.^{2/}

CTS therefore recommends that the Commission heed the concerns of the smaller IXCs and address issues regarding the clarity of LOAs through narrowly tailored regulations while, at the same time, preempting any unnecessary, confusing, or costly state regulations. In this fashion the Commission can clarify its rules to protect consumers while ensuring that customers continue to receive the benefits of a vigorously competitive interexchange market in which customers can obtain ready access to reasonably priced service offerings through a variety of both large and small carriers.

^{1/} See TRA Comments at 5; ACTA Comments at 3-4; Home Owners Long Distance Comments at 2-3; One Call Comments at 3; Touch 1 Comments at 1; MidCom Comments at 7.

^{2/} ACTA Comments at 11-13; Sprint Comments at 4; LDDS Comments at 2-3; CompTel Comments at 10-13.

II. THE COMMISSION SHOULD PREEMPT INCONSISTENT STATE REGULATIONS

CTS supports various commenters' recommendation that the Commission clarify its rules and preempt any inconsistent state PIC change rules^{3/}. ACTA and others note, for example, that Florida is currently considering adopting its own rules governing interexchange carrier selection.^{4/} CTS shares ACTA's concern that other states will also institute proceedings to address this issue.^{5/} The development of a dual regulatory scheme threatens to impose conflicting regulations and unreasonable burdens upon both small and large IXC's. For example, Sprint suggests that large carriers would be forced to comply with fifty different sets of regulations.^{6/} Smaller carriers, of course, may not be able to afford to operate in certain markets because of the burden of compliance. As ACTA aptly notes, a single set of regulations will enhance customer confidence and reduce IXC costs.^{7/} Failure to preempt state regulations may however, interfere with the continued growth of competition in the IXC marketplace, and undoubtedly will increase consumer prices.

CTS concurs with commenters' assessments that the FCC has clear authority to preempt inconsistent state regulation of PIC change orders and that, in this case, the exercise of authority

^{3/} See Sprint Comments at 4; LDDS Comments at 2-3; ACTA Comments at 11-13; CompTel Comments at 10-13.

^{4/} ACTA Comments at 11-12. In Re Proposed Revisions to Rule 25-4.118, F.A.C., Interexchange Carrier Selection, Docket No. 941190-TI, Order No. PSC-94-1566-NORTI (December 15, 1994).

^{5/} ACTA Comments at 12.

^{6/} Sprint Comments at 4.

^{7/} ACTA Comments at 12.

would be in the public interest.^{8/} As CompTel suggests, the FCC may, in this instance, preempt state regulation of intrastate PIC changes since it is not possible to separate the interstate and intrastate components of a PIC change.^{9/} To the extent PIC changes are conducted on an interstate basis, the FCC's authority to preempt inconsistent state regulation is clear.

III. THE COMMISSION'S REGULATIONS ARE OVERREACHING AND WILL HARM THE ABILITY OF SMALLER IXC'S TO COMPETE

CTS joins the numerous parties that express their concern that the Commission's NPRM failed to properly consider the competitive impact of the proposed regulations upon smaller IXC's.^{10/} As TRA notes, three years ago the Commission's PIC Verification Order expressly considered whether various verification requirements would "benefit . . . consumers without unreasonably burdening competition in the interexchange market."^{11/} CTS agrees with TRA that, in imposing regulatory requirements, it is proper to weigh the burden of the proposed regulation against the interest of protecting consumers from unauthorized PIC changes. TRA notes that in refusing to impose certain regulations on carriers, the Commission's PIC Verification Order appropriately recognized that some requirements would significantly harm smaller IXC's and, as

^{8/} See e.g., Hi-Rim Comments at 5-7; CompTel Comments 10-13.

^{9/} CompTel Comments at 10-13 See also Public Utility Comm'n of Texas v. FCC, 886 F2d 1325, 1331-33 (D.C. Cir. 1989) (citing Louisiana Public Serv. Comm'n v. FCC, 476 U.S. 355 (1986)).

^{10/} See supra note 1.

^{11/} See TRA Comments at 5. See also In re Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd. 1038 ¶ 42 (1992) ("PIC Verification Order"), recon. denied 8 FCC Rcd. 3215 (1993).

a result, reduce the likelihood they could continue to compete in the overall marketplace.^{12/} A careful cost/benefit analysis is no less appropriate today than it was three years ago.

After consideration of the Commission's proposed regulations, and the costs and benefits associated with implementation, CTS endorses the proposed rules requiring that LOAs be clear, legible and unambiguous.^{13/} CTS believes that these regulations directly address the Commission's concerns while providing smaller IXC's with sufficient flexibility to remain a competitive and viable alternative to large carriers. Additionally, CTS recognizes the strong potential for abusive "negative-option" and "bi-lingual" LOAs and thus supports the Commission's proposed regulation in these areas as well.^{14/}

CTS strongly agrees with the commenters' request that any new rules promulgated by the Commission in this area afford IXC's flexibility.^{15/} CTS concurs with TRA's conclusion that "any limitation on marketing obviously inures to the benefit of large, established providers with substantial market share."^{16/} Although the IXC marketplace continues to grow more competitive, MCI notes that AT&T continues to possess more than 60-percent market share.^{17/} TRA aptly notes that "small to mid-sized carriers need the ability to market creatively and aggressively in

^{12/} Id. at ¶ 42.41.

^{13/} 64.1150(d)

^{14/} 64.1150(e)

^{15/} TRA Comments at 12; Touch 1 Comments at 7; ACTA Comments at 2-5.

^{16/} TRA Comments at 12.

^{17/} MCI Comments at 4.

order to compete with the major carriers" and should thus be provided with some flexibility in achieving the underlying regulatory purpose.^{18/}

Accordingly, CTS must join commenters in opposition to other of the Commission's proposed regulations. CTS agrees with commenters' assertions that certain regulations proposed by the Commission will prohibit reasonable activity that is vital to small IXC's ability to compete in the marketplace. As addressed below, CTS joins commenters in their conclusion that some of the Commission's proposed rules will also disproportionately impose additional costs on smaller IXC's and thereby prohibit marketing activity that is otherwise clear, legible, and not misleading. CTS therefore maintains that certain of the proposed regulations will impede the growth of customer choice and value in the interexchange market.

For example, several commenters support CTS's position that regulation of LOA's typeface, point-size and language is unnecessary given the requirement of 64.1150(d) that LOAs be "clear and unambiguous" and that certain information be contained within the LOA.^{19/} TRA is correct in its claim that these regulations would impose proportionally greater costs on smaller IXC's.^{20/} TRA notes, for instance, that IXC's would be required to discard, at substantial costs, "otherwise reasonable LOAs."^{21/} Furthermore, various commenters note that these regulations restrict a carrier from utilizing otherwise acceptable marketing material to distinguish their

^{18/} Id.

^{19/} See TRA Comments at 7; AT&T Comments at 10; Touch 1 at 5.

^{20/} See TRA Comments at 7.

^{21/} Id.

services and remain both competitive and viable.^{22/} CTS therefore finds specific typeface and language conventions for LOAs unnecessary.

In addition, CTS concurs with the substantial number of commenters that foresee the Commission's blanket proposal to prohibit combining inducements and LOAs on the same document,^{23/} or to prohibit combining LOAs and inducements altogether,^{24/} as seriously interfering with legitimate marketing efforts.^{25/} CTS notes that many carriers combine LOAs with checks to cover the cost of the associated PIC change and/or to provide an additional incentive to a prospective customer. As MCI correctly stated, those marketing alternatives have enabled carriers to compete effectively against dominant service providers.^{26/} Furthermore, TELECAM calculates that the requirement that an LOA be a separate document will require a four percent rate increase.^{27/} CTS agrees with TRA and Touch 1 in stating that these requirements will disproportionately impact small IXC's.^{28/} The general requirement that LOAs be legible, clear and not misleading is sufficient to address the parties' concerns without denying both customers and carriers the benefits of incentive programs. For example, Touch 1 suggests that it would caption an incentive check with all necessary information required by section 64.1150(d) in large readable

^{22/} Touch 1 Comments at 1; MCI Comments at 3-4.

^{23/} 64.1150(b).

^{24/} 64.1150(c).

^{25/} ACTA Comments at 2; One Call Comments at 3; TRA Comments at 12; TeleCom Comments at 2; Hi-Rim Comments at 3.

^{26/} MCI Comments at 9.

^{27/} TELECAM Comments at 2.

^{28/} Touch 1 Comments at 7; TRA Comments at 12; One Call Comments at 2.

print. Such a legitimate promotion would, however, be prohibited under Section 64.1150(c). CTS thus encourages the Commission to tailor its rules more narrowly to permit legitimate pro-consumer, pro-competitive marketing.

Lastly, CTS agrees with a number of commenting parties that the Commission should not apply its telemarketing rules to 800 number calls.^{29/} CTS concurs with Sprint's assessment that the record does not reflect sufficient evidence to warrant such regulations.^{30/} CTS notes that 800 calls are essential to IXC marketing and competition, and that imposing regulation without evidence of abuse will harm both carriers and consumers.

IV. CONCLUSION


CTS supports the Commission's efforts to eliminate deceptive marketing and to eliminate unclear or misleading inducements. Before imposing unnecessary regulations, the Commission should weigh the benefits of regulation against the likely costs to both carriers and consumers. CTS maintains that the Commission can achieve its goal through general regulations requiring that LOAs be "clear and unambiguous." The imposition of unnecessary specific regulations, or the failure of the Commission to preempt inconsistent state regulation will significantly restrict the ability of smaller IXCs to compete for customers and inhibit carrier initiatives that ultimately serve to benefit the majority of end-users.

^{29/} MCI Comments at 14; LDDS Comments at 6; AT&T Comments at 22-23.

^{30/} Sprint Comments at 15.

WHEREFORE, Communications TeleSystems, International, respectfully submits these
reply comments on the Commission's proposed rule changes.

Respectfully submitted,



Andrew D. Lipman
William B. Wilhelm, Jr.


SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7500

Attorneys for Communications
TeleSystems International

DATED: February 8, 1995

CERTIFICATE OF SERVICE

I, Brenna M. Newman, hereby certify that a copy of the foregoing Reply Comments has been sent by United States First Class Mail, postage prepaid, unless otherwise noted, to all parties listed in the foregoing Reply Comments on this 8th day of February, 1995.


BRENNAM. NEWMAN

**ALLNET COMMUNICATIONS SERVICE
ROY L. MORRIS
REGULATORY COUNSEL
1990 M STREET, NW - SUITE 500,
WASHINGTON, D.C. 20036**

**HERTZ TECHNOLOGIES, INC.
REBECCA L. REED
TARIFF ANALYST
5601 NORTHWEST EXPRESSWAY
OKLAHOMA CITY, OK 73132**

**FORMAL COMPLAINTS BRANCH
FEDERAL COMMUNICATIONS COMM.
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
PLAZA LEVEL
1250 23RD STREET, N.W.
WASHINGTON, D.C. 20554**

**INTERNATIONAL TRANSCRIPTS SERVICES
ROOM 140
2100 M STREET, N.W.
WASHINGTON, D.C. 20037**

**CHARLES C. HUNTER
HUNTER & MOW, P.C.
1620 I STREET, N.W.
SUITE 701
WASHINGTON, D.C. 20006**

**GENEVIEVE MORELLI
VICE PRESIDENT AND
GENERAL COUNSEL
THE COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1140 CONNECTICUT AVE., N.W.
SUITE 220
WASHINGTON, D.C. 20036**

**DANNY E. ADAMS
STEVEN A. AUGUSTINO
WILEY, REIN & FIELDING
1776 K STREET, N.W.
WASHINGTON, D.C. 20006**

**KATHLEEN M.H. WALLMAN
CHIEF, COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
2033 M STREET, N.W., ROOM 918
WASHINGTON, D.C. 20554**

**A. RICHARD METZGER
DEPUTY BUREAU CHIEF
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W., ROOM 500
WASHINGTON, D.C. 20554**

**KATHLEEN LEVITZ
DEPUTY BUREAU CHIEF
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W. ROOM 500
WASHINGTON, D.C. 20554**

CHARLES H. HELEIN
HELEIN & WAYS DORF, P.C.
GENERAL COUNSEL
AMERICA'S CARRIERS TELECOM.
1850 M STREET, N.W.
WASHINGTON, D.C. 20036

CHARLES H. HELEIN
JULIA A. WAYS DORF
HOMEOWNERS LONG DISTANCE, INC.
1850 M STREET, N.W.
WASHINGTON, D.C. 20036

MICHAEL J. SHORTLEY, III
ATTORNEY FOR FRONTIER
COMMUNICATIONS
FRONTIER COMMUNICATIONS INTERN.
180 SOUTH CLINTON AVENUE
ROCHESTER, NEW YORK 14646

CATHERINE R. SLOAN, ESQ.
VICE PRESIDENT, FEDERAL AFFAIRS
LDDS COMMUNICATIONS, INC.
1825 EYE STREET, NW
SUITE 400
WASHINGTON, D.C. 20006

KATHY L. SHOBERT
FORMAL COMPLAINTS BRANCH
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
PLAZA LEVEL
1250 23RD STREET, N.W.
WASHINGTON, D.C. 20554

ITS
2100 M STREET, N.W.
SUITE 140
WASHINGTON, D.C. 20037

LEON M. KESTENBAUM
H. RICHARD JUHNKE
1850 M STREET, N.W.
11TH FLOOR
WASHINGTON, D.C. 20036

FORMAL COMPLAINTS BRANCH
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMM.
1250 23RD STREET, N.W.
PLAZA LEVEL
WASHINGTON

LEON M. KESTENBAUM
H. RICHARD JUHNKE
1850 M STREET, N.W.
11TH FLOOR
WASHINGTON, D.C. 20036

WILBERT E. NIXON, JR.
FEDERAL COMMUNICATIONS COMM.
1250 23RD STREET, N.W.
ROOM 100
WASHINGTON, D.C. 20554

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LEVINE
STATE OF CALIFORNIA AND THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ROBERT W. GEE
KARL R. RABAGO
SARAH GOODFRIEND
PUBLIC UTILITY COMMISSION OF TEXAS
7800 SHOAL CREEK BLVD.
AUSTIN, TX 78757

JOHN H. CARLEY
DEPUTY ATTORNEY GENERAL
PUBLIC ADVOCACY
STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271

KIRK SMITH
PRESIDENT
OPERATOR SERVICE COMPANY
1624 TENTH STREET
LUBBOCK, TX 79401

ROBERT M. LYNCH
DURWARD D. DUPRE
J. PAUL WALTERS, JR.
SOUTHWESTERN BELL TELEPHONE
COMPANY
ONE BELL CENTER, SUITE 3520
ST. LOUIS, MISSOURI 63101

WILLIAM J. COWAN
GENERAL COUNSEL
NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223-1350

WILLIAM TERRY MILLER
SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DAVID J. GILLES
ASSISTANT ATTORNEY GENERAL
OFFICE OF CONSUMER PROTECTION
123 WEST WASHINGTON AVENUE
P.O. BOX 7856
MADISON, WI 53707-7858

KATHY SHOBERT
DIRECTOR, FEDERAL AFFAIRS
901 15TH STREET, N.W.
SUITE 900
WASHINGTON, D.C. 20005

RANDALL B. LOWE
PIPER & MARBURY
1200 19TH STREET, N.W.
WASHINGTON, D.C. 20036

**EDWARD R. WHOLL
WILLIAM J. BALCERSKI
NYNEX TELEPHONE COMPANIES
120 BLOOMINGDALE ROAD
WHITE PLAINS, NY 10605**

**CYNTHIA B. MILLER
ASSOCIATE GENERAL COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
101 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399**

**WILLIAM TERRY MILLER
PRESIDENT
TELCAM
901 ROSENBERG
GALVESTON, TEXAS 77550**

**JAMES P. TUTHILL
BETSY STOVER GRANGER
PACIFIC BELL
NEVADA BELL
140 NEW MONTGOMERY STREET, RM. 1525
SAN FRANCISCO, CA 94105**

**WILLIAM MALONE
9117 VENDOME DRIVE
BETHESDA, MARYLAND 20817-4022**

**GTE SERVICE CORPORATION
DAVID J. GUDIRNO
1850 M STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20036**

**GREGORY F. INTOCCIA
DONALD J. ELARDO
1801 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006**

**MARK C. ROSENBLUM
ROBERT J. MCKEE
PETER H. JACOBY
SETH S. GROSS
295 NORTH MAPLE AVENUE
BASKING RIDGE, NJ 07920**

**RANDALL B. LOWE
ONE CALL COMMUNICATIONS, INC.
PIPER & MARBURY
1200 19TH STREET, N.W.
WASHINGTON, D.C. 20036**